MOHD YAZID HASHIM

v.

PP

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
AHMAD FAIRUZ JCA
MOKHTAR SIDIN JCA
[CRIMINAL APPEAL NO: T-05-55-97]
25 FEBRUARY 1999

CRIMINAL LAW: *Murder - Circumstantial evidence - Whether proved beyond reasonable doubt - Omission by trial judge to address on s. 304 - Omission to lay ingredients of offence in judgment - Whether fatal - Penal Code, ss. 300, 302, 304*

The appellant was charged with murder under s. 302 Penal Code. It was the prosecution's case that the appellant had struck several fatal blows on the deceased by using a piece of wood ('P19A') and had taken away her jewelleries. Before the learned trial judge, the prosecution led evidence which showed, *inter alia*, that: (i) the appellant had gone to the place where the deceased's house was located on the day of the alleged murder; (ii) the head injuries which caused the deceased's death were consistent with they being caused by blows coming from an object like P19A; (iii) the deceased prior to her death had some jewelleries with her, and soon after her death, parts of the jewelleries, as well as pawn receipts pertaining to the deceased's other jewelleries, were found in the possession of the appellant; and (iv) the trousers and shirt worn by the appellant on the day of the deceased's death ('P23 and P25') were stained with the deceased's blood.

The learned judge ruled from the circumstantial evidence thus laid that the appellant was the author of the blows that inflicted the fatal injuries on the deceased's head, and had therefore called for the appellant's defence. The learned judge then heard but rejected the appellant's story that it was his friend Man who struck the deceased with a piece of wood, and consequently convicted the appellant as charged and sentenced him to death. The appellant appealed and argued that: (i) a conviction under s. 302 Penal Code was unwarranted as he did not have the intention to cause death of the deceased; (ii) the conviction was fatally flawed as the learned judge had failed to address on the ingredients of murder or consider a conviction under s. 304 Penal Code.

Held:
Per Ahmad Fairuz JCA

[1] The evidence tendered before the learned trial judge were sufficient to support the learned judge's finding that the prosecution had proved its case beyond reasonable doubt.

[2] On the evidence, the prosecution was right in their argument that the appellant had delivered the fatal blows on the deceased with P19A because he did not want the deceased to identify him. Those blows, considered in the light of the appellant not wanting the deceased to identify him, and the nature of the deceased's head injuries which include fracture of her skull, are ample evidence of the appellant's intention to kill the deceased.

[3] The trial judge's judgment and the record of the trial are replete with evidence and reasons supporting the judge's finding that the offence had been proven beyond reasonable doubt. The trial herein, furthermore, is not a jury trial, and that being so, the learned judge's omission to elucidate the ingredients of the offence cannot be fatal.

[4] The duty of the trial judge to mention the possible defence or defences only arises if the evidence indicates the possible defence of one or more of the exceptions in s. 300 Penal Code. Here, the evidence clearly showed that the appellant had committed murder under s. 302 Penal Code. Since the evidence disclosed did not support a conviction for any other offence, there was no necessity for the trial judge to address himself on s. 304 Penal Code.

[Appeal dismissed; conviction and sentence confirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu telah dituduh dengan kesalahan bunuh di bawah s. 302 Kanun Keseksaan. Ianya menjadi kes pendakwaan bahawa perayu telah beberapa kali memukul simati sehingga mati dengan menggunakan sebatang kayu ('P19A'). Di hadapan yang arif hakim perbicaraan, pendakwaan mengemukakan keterangan, antara lain, bahawa: (i) perayu telah pergi ke tempat di mana terletaknya rumah si mati pada hari si mati dibunuh; (ii) kecederaan kepala yang menyebabkan kematian si mati adalah konsisten dengan kecederaan yang diakibatkan oleh pukulan-pukulan yang datang dari objek seperti P19A; (iii) beberapa barang kemas berada dalam milik si mati sebelum kematiannya, dan sejurus selepas pembunuhannya, sebahagian barang-barang kemas tersebut, serta resit-resit pajakgadai berkaitan dengan barang-barang kemas si mati yang selebihnya, didapati berada dalam milik perayu; dan (iv) seluar dan baju yang dipakai oleh perayu pada hari kematian si mati ('P23 dan P25') didapati dilekati dengan darah si mati.

Hakim yang bijaksana memutuskan dari keterangan 'circumstantial' yang dipaparkan bahawa perayu adalah orang yang memukul dan menyebabkan kecederaan fatal kepada kepala si mati, dan dengan itu memerintahkan supaya perayu membuat pembelaan. Hakim yang bijaksana kemudian mendengar tetapi menolak cerita perayu bahawa si mati sebenarnya dipukul oleh kawannya Man dengan menggunakan sebatang kayu, dan berikutan itu mensabit perayu seperti tuduhan dan menjatuhkan hukuman mati terhadapnya. Perayu merayu dan berhujah bahawa (i) sabitan di bawah s. 302 Kanun Keseksaan tidak wajar kerana perayu tidak ada niat untuk membunuh; (ii) pensabitannya adalah silap dengan cara yang memudaratkan kerana hakim yang bijaksana langsung tidak menyentuh tentang ciri-ciri kesalahan bunuh atau menimbang untuk mensabit di bawah s. 304 Kanun Keseksaan.

Diputuskan:
Oleh Ahmad Fairuz HMR

[1] Keterangan yang dikemukakan di hadapan hakim perbicaraan yang bijaksana adalah mencukupi untuk menyokong dapatan beliau bahawa pendakwaan telah membuktikan kes mereka di luar keraguan munasabah.

[2] Berdasarkan keterangan, pendakwaan adalah betul dalam hujah mereka bahawa perayu telah memukul si mati dengan menggunakan P19A kerana perayu tidak mahu si mati mengecam atau mengenalinya. Pukulan-pukulan tersebut, dilihat dari pandangan bahawa perayu tidak mahu dia dicam oleh si mati, serta sifat kecederaan kepada kepala si mati yang termasuk keretakan kepada kerangka kepalanya, menunjukkan dengan jelas bahawa perayu berniat untuk membunuh si mati.

[3] Penghakiman hakim yang bijaksana dan rekod perbicaraan dipenuhi dengan keterangan dan alasan-alasan yang menyokong dapatan hakim bahawa kesalahan telah dibuktikan di luar keraguan yang munasabah. Lagipun, perbicaraan di sini bukan satu perbicaraan berjuri, dan dengan itu, kegagalan hakim yang bijaksana menerangkan ciri-ciri kesalahan bunuh tidaklah memudaratkan.

[4] Tanggungjawab hakim perbicaraan untuk menyebut tentang pembelaan atau pembelaan-pembelaan yang mungkin wujud hanya timbul jika keterangan menunjukkan mungkin wujud pembelaan di bawah mana-mana pengecualian yang tertera dalam s. 300 Kanun Keseksaan. Di sini, keterangan menunjukkan dengan jelas bahawa perayu telah melakukan kesalahan bunuh di bawah s. 302 Kanun Keseksaan. Oleh kerana keterangan yang ada tidak menyokong apa-apa sabitan bagi apa jua kesalahan lain, maka tiada keperluan untuk hakim perbicaraan memberi pertimbangan kepada s. 304 Kanun Keseksaan.

[Rayuan ditolak; sabitan dan hukuman disahkan.]

Case referred to:
Jeganathan v. PP [1963] MLJ 274 ***(refd)***

Legislation referred to:
Penal Code, ss. 300, 302, 304

For the appellant - Karpal Singh; M/s Karpal Singh
For the respondent - Abang Iskandar DPP

[Appeal from High Court, Kuala Terengganu; Criminal Trial No: 45-1-96]

Reported by WA Sharif

JUDGMENT

Ahmad Fairuz JCA:

The appellant was convicted of the murder of one Esah bt. Mamat (deceased) in contravention of s. 302 Penal Code and was sentenced to death. He appealed against that conviction. We dismissed his appeal and now state the grounds of our decision.

Briefly, the evidence for the prosecution revealed that the deceased was found dead at about 10am on 2 January 1996. She suffered several injuries on her left arm, face and head. Medical evidence disclosed that the head injuries had caused the deceased's death. Medical evidence further divulged that the head injuries were caused by several successive blows with a blunt instrument like that piece of wood tendered by the prosecution as P19A. These blows had also caused a fracture at the left part of the deceased's skull. It was also unfolded by the prosecution that the deceased owned jewelleries, some of which she used to wear and some she carried in her handbag whenever she attended functions. She was last seen attending a talk at Bukit Kecil mosque on 30 December 1995. She had her handbag with her then. The prosecution further uncovered three pawn receipts dated 31 December 1995 in the possession of the appellant. The receipts were issued by Yew Lee Pawnshop. From this pawnshop and from the appellant, the jewelleries of the deceased were recovered. It was the prosecution's case that the appellant had struck the fatal blows on the deceased and had taken away her jewelleries. The appellant had kept some of the jewelleries to himself and had, on 31 December 1995, pawned the others for the sum of RM7,000. With a part of this money he bought a motorcycle.

It was the appellant's case that on 30 December 1995 at about 2pm the appellant, with two of his friends (that is Jen Juling and Man), were consuming drugs in some bushes at Bukit Kecil. They then planned to break into the deceased's house. As they were carrying out their plan, the deceased returned. On seeing the deceased they ran away. Before the appellant ran, he saw Man

strike the deceased with a piece of wood. The appellant, later, went to Jalan Pasir Panjang where he met Jen Juling who handed him a package containing jewelleries wrapped with a handkerchief. The sole witness called by the appellant was his sister who deposed to the fact that the appellant tried to sell the three pawn receipts to her. She did not buy them as the receipts did not contain the appellant's name.

It was contended by the appellant's counsel that the appellant could not be convicted under s. 302 Penal Code as the only evidence against the appellant came from SP20. The learned trial judge, however, had pointed in his judgment to other evidence which when considered cumulatively with SP20's evidence caused him to be satisfied that the prosecution had proven its case against the appellant beyond reasonable doubt. It was clear from his judgment that the learned trial judge had:

(a) considered the evidence that SP11 had, at about 2pm on 30 December 1995, carried the appellant on his motorcycle to Bukit Kecil. And the deceased's house was at Bukit Kecil;

(b) relied on the evidence of SP13 who also had carried the appellant on his motorcycle from Jalan Gong Kapas which was close to Bukit Kecil to Kampong Tiong and two other places. This was at about 4pm on 30 December 1995;

(c) also taken into consideration the evidence which showed that the appellant was in possession of three pawn receipts which led to the recovery of the deceased's jewelleries;

(d) considered the medical evidence on the injuries that caused the deceased's death.

Other than the aforesaid findings of facts by the learned trial judge as disclosed in his judgment, the notes of evidence also revealed that SP13 had in fact identified P25 as the shirt worn by the appellant on 30 December 1995 at about 4pm. SP20 who lived at Kampong Tiong had identified P23 as the trousers worn by the appellant between 4-5pm on 30 December 1995. P23 and P25 were sent to the chemist (SP1) who testified that the deceased's blood were found on them.

In relation to the pawn receipts, SP13 had also deposed in evidence that the appellant had tried on the same day (30 December 1995) to pawn jewelleries at two pawnshops but failed to do so because the shops were closed. SP13 was also shown by the appellant the jewelleries wrapped with a handkerchief.

The abovementioned concise exposure of the evidence tendered before the learned trial judge are, in our view, sufficient to support the learned trial judge's finding at the close of the prosecution's case that the prosecution had proved its case beyond reasonable doubt.

The next issue taken up by the appellant's counsel was in relation to the appellant's statement to SP20 to the effect that the deceased did not die. The counsel contended that if the appellant had the intention to cause the death of the deceased then the appellant would have "finished her". To this, the Deputy Public Prosecutor (DPP) referred us to the whole sentence of what the appellant had said, that is: "... Katanya, mak cik itu tak mati, cuma dia tak mahu mak cik itu cam dia ..." It was argued by the DPP that because the appellant did not want the deceased to identify him, the appellant had delivered the fatal blows on the deceased with P19A. We agree with this argument. More so, when the medical evidence on the injuries that caused the deceased's death revealed that the injuries were the result of several successive blows with P19A. These blows, considered in the light of the appellant not wanting the deceased to identify him, and the nature of the deceased's head injuries which include fracture of her skull are ample evidence of the appellant's intention to kill the deceased.

The next contention of the appellant's counsel was on the learned trial judge's omission to state the ingredients of the offence under s. 302 Penal Code in his judgment. As this is not a jury trial wherein an elucidation of the ingredients of the offence to members of the jury is a legal requirement (under the Criminal Procedure Code before the abolishment of the jury trial), we are of the view that such omission by the learned trial judge, who is not only legally qualified but experienced in court trials and practice, cannot be fatal so long as the learned trial judge's judgment and the record of the trial are replete with evidence and reasons supporting the judge's finding that the offence had been proven beyond reasonable doubt. And this is what the learned trial judge's judgment and the record in this appeal had shown. In his judgment, the learned trial judge had shown how he arrived at the finding that the deceased died as a result of the injuries on her head. The learned trial judge had spelt out in his judgment the various circumstantial evidence that irresistably pointed out to the fact that the appellant was the author of those blows that inflicted the fatal injuries on the deceased's head. The injuries suffered by the deceased and SP20's evidence in particular had been stressed by the learned trial judge as ample evidence of the appellant's intention to cause the deceased's death. We, therefore, hold that the omission of the learned trial judge cannot, in the circumstances of this case, affect the conclusion of the learned trial judge that the prosecution had proved its case beyond reasonable doubt.

The appellant's counsel also raised the contention pertaining to the failure of the learned trial judge to consider whether the appellant could be convicted under s. 304 Penal Code. To this, the DPP emphasised that the evidence showed clearly that the appellant had committed murder under s. 302 Penal Code. We agree with the DPP that the evidence disclosed cannot support a conviction for any other offence except murder under s. 302 Penal Code. The case of *Jeganathan v. PP* [1963] MLJ 274 cited by the appellant's counsel, clearly show that the duty of the trial judge to mention the possible defence or defences to the jury only arises **if the evidence indicates** the possible defence of one or more of the exceptions under s. 300 Penal Code. In this appeal now before us, the evidence give no such indication. In fact, the evidence tendered by the defence exculpates the appellant completely of the offence of murder. As such we are of the view that there was no necessity for the trial judge to address himself on s. 304 Penal Code.

For the abovementioned reasons we are left with no alternative except to agree that the learned trial judge was right when, at the conclusion of the defence, he held that the defence had not raised any reasonable doubt in the prosecution's case. Consequently, this appeal must be dismissed and we confirmed the conviction and sentence made by the High Court.